No. 87-1617

In the Supreme Court of the United States

October Term, 1987

PAUL NEWMAN, GEORGE ROY HILL, AND PAN ARTS PRODUCTION CORPORATION,

Petitioners,

v.

UNIVERSAL PICTURES, a division of UNIVERSAL CITY STUDIOS, INC., and MCA, INC.,

Respondents.

PETITIONERS' REPLY BRIEF

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TABLE OF AUTHORITIES

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PETITIONERS' REPLY BRIEF

Respondents' mistaken antitrust injury argument only emphasizes the need for this Court to articulate the proper analytical framework for evaluating antitrust injury.

The operative facts and legal issue before this Court are simple.[1] In the 1970's, Newman[2] and Universal

[1] Respondents' opposition disputes some of the petitioners' allegations concerning the nature of the conspiracy. As this case was dismissed at the complaint stage, the petitioners' allegations must be taken as true and all inferences drawn in their favor. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

[2] This brief will refer to petitioners Paul Newman, George Roy Hill and Pan Arts Production Corporation collectively as "Newman", and to respondents Universal Pictures and MCA, Inc., collectively as "Universal."

entered into contracts under which Newman agreed to provide acting services in "The Sting" and "Slapshot," and Universal agreed to pay him a percentage of the films' gross proceeds from various sources of distribution. These residual payments are made on an annual basis and continue so long as the films produce revenue. Beginning in 1981, Universal and other major motion picture studios conspired to fix prices paid to all industry artists from video revenues. In each year since 1981, therefore, Newman's residual payments have been based on a conspiratorially fixed price rather than the competitive, market-established price for which he bargained. The sole issue is whether given these facts Newman has suffered antitrust injury.[3]

The crux of the respondents' opposition is that even if Newman receives fixed prices for his services, he does not suffer antitrust injury from the studios' conspiracy. Respondents' entire argument rests on the assumption that the only anticompetitive effect of price-fixing is on the bargaining process prior to entering into the contracts. Therefore, because Newman's contracts were signed before the studios' conspiracy began, respondents contend that Newman's receipt of fixed prices cannot "reflect the anticompetitive effect either of the violation or of anticompetitive acts made possible by the violation." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977).

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[3] The Ninth Circuit's decision rests solely on the issue of antitrust injury. Contrary to respondents' contention, the Ninth Circuit did *not* analyze or rule on the separate question of Newman's antitrust standing.

Respondents' antitrust injury analysis is neither "routine" nor consistent with the standards stated in *Brunswick* and *Blue Shield of Virginia v. McCready*, 457 U.S. 465 (1982). Antitrust injury analysis does not, as respondents suggest, isolate one anticompetitive effect of a violation and then determine whether the plaintiff's injury mirrors that effect. Such a standard is unduly narrow and wholly unworkable. Violations can have many competition-restraining effects, and litigants cannot predict in advance which one among several a court will pick.

This Court's *Brunswick/McCready* antitrust injury analysis requires only that the plaintiff's injury flow from an antitrust violation that reduces competition. Applying the Court's standard to this case, horizontal price-fixing is condemned because it distorts prices that would otherwise be set by free market forces. Therefore, the antitrust laws are concerned with sellers, such as Newman, who receive artificially depressed prices for their services. The difference between the fixed and competitive prices is a measure of both the plaintiff's individual damages and the conspiracy's market-distorting effects. *See Mandeville Island Farms v. American Crystal Sugar Co.*, 334 U.S. 219, 240-41 (1948).

There should not be any serious question that one who receives (or pays) fixed prices suffers the type of injury the antitrust laws were intended to prevent. These damages result directly from horizontal price-fixing, which always reduces competition. Logically, the distinct concept of antitrust injury cannot limit such recoveries. Petitioners respectfully request that this Petition for Writ

of Certiorari be granted to explicate proper antitrust injury analysis.

Respectfully submitted,

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I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on June 2, 1988, I served the within *Petitioners' Reply Brief* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(Original and forty copies)

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I declare under penalty of perjury that the foregoing is true and correct. Executed on June 2, 1988, at Los Angeles, California.

Betty J. Malloy
(Original signed)